

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

CARMEN FLORES, individually and on behalf of all others similarly situated,)	
)	
)	Case No. 07 C 6403
Plaintiff,)	
)	Judge Hibbler
v.)	
)	Magistrate Judge Valdez
DIAMOND BANK,)	
)	
Defendant.)	

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Plaintiff Carmen Flores moves this Court to certify this case as a class action, stating as follows:

1. Plaintiff's claims are based on Diamond Bank's failure to comply with the required ATM fee notice postings set forth in the Electronic Fund Transfers Act, 15 U.S.C. § 1693 *et seq.*, ("EFTA" or "Act"), with respect to a Diamond Bank-operated ATM located at 100 West North Avenue, Chicago, IL 60610.

2. Because the EFTA claims at issue arise from Diamond Bank's failure to post the statutorily-required surcharge notice on the outside of the ATM in question, the class action device is the ideal mechanism for disposition of all ATM-users' claims. In fact, the EFTA specifically endorses class actions as an appropriate mechanism for resolving claims under the Act.¹

¹

See 15 U.S.C. § 1693m.

3. In determining whether a class will be certified, the substantive allegations of the complaint should be accepted as true.² Moreover, Rule 23 is a remedial procedure which should be construed liberally to permit class actions.³

4. As detailed in Plaintiff's accompanying memorandum, the requirements to proceed with a class action under Fed. R. Civ. P. 23(a) - numerosity, commonality, typicality, and adequacy - are satisfied in this case. Moreover, the requirements for certifying a Rule 23(b)(3) class are also met.

WHEREFORE, Plaintiffs Carmen Flores respectfully requests that this Court enter an order certifying the following class:

All persons who, from November 12, 2006 to December 31, 2007, were charged a transaction fee for the use of automated teller machine number 049E4, located at Diamond Bank, 100 W. North Ave., Chicago, IL 60610.

Respectfully submitted,

By: /s/ Lance A. Raphael
One of Plaintiffs' Attorneys

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² *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 178 (1974); *Keele v. Wexler*, No. 95 C 3483, 1996 U.S. Dist. LEXIS 3253, *1 (N.D. Ill. March 19, 1996), *aff'd*, 149 F.3d 589 (7th Cir. 1998).

³ See, e.g., *Gates v. Towery*, No. 04 C 2155, 2004 U.S. Dist. LEXIS 22876, *4 (N.D. Ill. Nov. 10, 2004); *Cannon v. Nationwide Acceptance Corp.*, No. 96 C 1136, 1997 U.S. Dist. LEXIS 3517 at *4 (N.D. Ill. March 24, 1997).